

Licensing and Standard Setting Cooperation: Ex Ante Arrangements for the Licensing of Essential IPRs under EC and US Antitrust Laws

Research project

Investigator:

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Abstract:

Ensuring that the commercial objectives and the economic benefits of standard setting cooperation are realized requires that, in particular, two potential problems are addressed: first, the risk that essential IPRs are used to hold up those implementing the standard, and second, the problem that the aggregate royalties of the complementary essential IPRs reach a supra-optimal level.

This research project examines the ways standard setting organizations and their participants have attempted to address these two problems through ex ante licensing arrangements and how such arrangements are treated under EC and US antitrust laws. It examines the theories and conditions under which antitrust concerns may arise, including the risks of collusion or exclusion on the relevant technology and product markets, and the conditions under which the efficiency benefits resulting from resolving the two problems mentioned above may justify the restrictive effects of such arrangements in the rule of reason analysis under US law or under the Article 81(3) efficiency defence in EC law.